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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

ECUADOR

1. The Committee considered the fourth periodic report of Ecuador (CCPR/C/84/Add.6) at its 1673rd and 1674th meetings on 14 July 1998 (CCPR/C/SR.1673 and SR.1674) and adopted the following concluding observations at its 1692nd meeting on 27 July 1998 (CCPR/C/SR.1692).

## A. Introduction

2. The Committee welcomes the fourth periodic report as well as the addendum to the report, updating information submitted by the State party. The Committee appreciates the presence of a high level delegation and the frank exchange with the Committee, enabling it to obtain a clearer view of the present human rights situation in Ecuador.

3. The Committee, while appreciating the addendum to the report provided by the State party, regrets that it did not receive a core document, which would have helped the Committee to better understand the problems existing in Ecuador. The Committee also regrets the overall lack of reliable statistics.

## B. Positive aspects

4. The Committee takes note of the promulgation of the new Constitution in May 1997, which will enter into force in August 1998, and welcomes the expanded list of provisions for the protection of human rights.

5. The Committee welcomes the adoption of legislation which establishes measures for the compensation of victims of human rights violations. It also expresses its satisfaction with the information that the next-of-kin of two particularly serious cases of human rights violations have been compensated by the State party.

6. The Committee welcomes the National Human Rights Plan, as well as the establishment of the Consejo Nacional de la Magistratura. It also notes the decision to appoint a new Ombudsman and welcomes the creation of the remedies of amparo and habeas data, as well as the expansion of the remedy of habeas corpus.

7. The Committee welcomes the information that article 23 of the Constitution prohibits the enacting of amnesty legislation or granting pardons for human rights violations; that torture, enforced disappearances and extrajudicial executions have no statute of limitation; and that obedience to superior orders cannot be invoked as an extenuating circumstance. It also welcomes the information that the jurisdiction of the military tribunals has been limited to members of the armed forces in the exercise of their official functions; that these tribunals have no jurisdiction over civilians; and that cases of human rights violations by members of the army and the security forces fall under the jurisdiction of civilian courts.

8. The Committee welcomes the information that the Constitutional Court has declared unconstitutional the criminalization of private homosexual relations between consenting adults and the law excluding persons charged under the Narcotics and Psychotropic Substances Act from the application of the new provisions on detention pending trial.

9. The Committee welcomes the information that a series of educational programmes have been devised in collaboration with international institutions, to enable all segments of the population, in particular members of the army, security forces and the police, and members of the judiciary and lawyers, to be better acquainted with international standards for the protection and observance of human rights and human dignity.

C. Principal subjects of concern, suggestions and recommendations

10. The Committee is concerned at the many instances of violence against women and the very few judicial decisions thereon. The Committee stresses that all reported acts of violence against women should be investigated and appropriate judicial proceedings instituted.

11. The Committee expresses its concern about the very high number of suicides of young females referred to in the report, which appear in part to be related to the prohibition of abortion. In this regard, the Committee regrets the State party's failure to address the resulting problems faced by adolescent girls, in particular rape victims, who suffer the consequences of such acts for the rest of their lives. Such situations are, from both the legal and practical standpoints, incompatible with articles 3, 6 and 7 of the Covenant, and with article 24 when female minors are involved. The Committee

recommends that the State party adopt all necessary legislative and other measures to assist women, and particularly adolescent girls, faced with the problem of unwanted pregnancies to obtain access to adequate health and education facilities.

12. Notwithstanding the postive information provided in respect of the measures taken to amend criminal proceedings, to establish oral hearings and to introduce alternative ways of dealing with civil matters, the Committee continues to be concerned about the unreasonably long judicial delays.

The Committee encourages the State party to expedite the process in view of the severe backlog in the courts.

13. The Committee is particularly concerned that accused persons may be held in detention pending trial for a maximum duration of a third of the possible sentence facing them, irrespective of the risk that they may fail to appear for trial and that the State party's own statistics indicate that close to 70 per cent of the prison population is awaiting trial. This situation is incompatible with the presumption of innocence and the right to be tried within a reasonable time or to be released on bail as provided for in articles 9 and 14 of the Covenant.

The Committee recommends that bail legislation be brought into conformity with the provisions of the Covenant and that resort to preventive detention be the exception and not the rule.

14. The Committee expresses concern about the long delays in judicial proceedings which are incompatible with the requirements of articles 9 and 14 of the Covenant. It is also concerned at the severe shortage of public defenders for the poor in Quito and Guayaquil and their total unavailability in many parts of the country. This situation is particularly grave since Ecuadorian law requires mandatory legal assistance in court proceedings.

The Committee recommends that the State party address the question of the long judicial delays, and in particular that it comply with the provisions of the Code of Criminal Procedure, which stipulates that the initial trial should be completed within 60 days. The Committee encourages the State party to increase the number of public defenders and to extend their presence throughout the whole of its territory.

15. The Committee expresses its concern that the provisions of Law No. 10282 on the state of emergency and those contained in article 103 (6) (h) of the Constitution, enumerating the constitutional articles which may be derogated from during a state of emergency are not in conformity with the Covenant.

The Committee regrets not having received sufficient information on which articles may be derogated from during a state of emergency and whether they are in conformity with the Covenant.

16. The Committee is concerned that, despite the Plan for Equal Opportunity 1996-2000 and the constitutional guarantees of the rights of women and laws designed to end discrimination, women continue to receive unequal

treatment in Ecuador owing in part to the continuation of traditional attitudes and obsolete laws. This situation and the aforementioned laws give rise to problems under articles 3, 23, 24 and 26 of the Covenant.

The Committee recommends that the State party fully implement the Plan for Equal Opportunity. It also recommends that the State party abrogate those provisions of the Code of Criminal Procedure which prevent a prostitute from being considered as a suitable witness in trials. The Committee requests the State party to inform it of the measures adopted and of the results achieved under the Plan for Equal Opportunity in its next periodic report.

17. The Committee is also concerned that, despite the legal requirement of judicial authorization for the employment of children under 14 years of age, there continues to be exploitation of children in employment.

The Committee recommends that the Comité Nacional para la Eradicación Progresiva del Trabajo Infantil be provided with the necessary means to carry out its mandate to eliminate the practice of child labour.

18. The Committee is concerned that the births of children born in Ecuador to undocumented refugees are frequently not registered due to the parents' fear of deportation. This situation prevents the children from claiming Ecuadorian nationality, to which any child born in Ecuador is entitled under Ecuadorian law.

The Committee recommends that the State party adopt measures guaranteeing to all children of undocumented refugees born in Ecuador the right to a nationality.

19. The Committee expresses concern at the impact of oil extraction on the enjoyment by members of indigenous groups of their rights under article 27 of the Covenant. In this connection, the Committee is concerned that, despite the legislation enacted to allow indigenous communities to enjoy the full use of their traditional lands in a communal way, there remain obstacles to the full enjoyment of the rights protected under article 27 of the Covenant.

The Committee recommends that further measures be taken to ensure that members of indigenous groups be protected against the adverse effects of the oil exploitation within the country and be enabled to enjoy fully their rights under article 27 of the Covenant, particularly with regard to preservation of their cultural identity and traditional livelihood.

20. The Committee appreciates the assurances provided by the State party that the views of the Committee expressed in communications Nos. 480/1991 and 481/1991 are being dealt with. However, the Committee has not been informed of the actual implementation of the views and the redress that the victims may have obtained. The Committee awaits the receipt of the relevant information.

21. The Committee urges that respect for human rights be institutionalized at all levels of government, and recommends that human rights education be provided in schools at all levels and that the present concluding observations be widely disseminated.

22. The Committee recommends that the State party give the widest dissemination to the present concluding observations, in particular by bringing them to the attention of officials responsible for the administration of justice, non-governmental organizations and the media.

23. The Committee draws the attention of the Government of Ecuador to the provisions of paragraph 6 (a) of the Guidelines Regarding the Form and Contents of Periodic Reports from States Parties, and requests that its next periodic report, due in June 2001, should include material which addresses all the present concluding observations.

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